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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,490	11/26/2003	Dawn Sikorski	030867	9538
26285	7590	10/27/2008		
K&I, GATES LLP				
535 SMITHFIELD STREET				
PITTSBURGH, PA 15222				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
10/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,490

Applicant(s)

SIKORSKI, DAWN

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Claims 1-10 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto et al.

Goto et al disclose an oil and fat composition comprising 1,3 diacylglycerol oil in amount of 15-95%. The fatty acids comprised by the diacylglycerol include 55% or more of unsaturated fatty acids. The oil and fat composition is used in products such as cakes, cookies , pies, breads etc... The amount of oil and fat of the food product is in the range of 3-95%. Food materials such as emulsifiers, lecithin, gum, colorant etc... can be added. (see page 2 lines 40-58, page 4 lines 20-58 and the examples.)

Goto et al do not disclose substitute for all of the triacylglycerol oil and fat, ingredients as in claim 14, the foods are brownies and muffin and the protein content of the product.

It would have been obvious to one skilled in the art to replace all of the triacylglycerol when desiring a healthier product; this would have been an obvious matter of preference. It would have been obvious to sodium stearoyl lactylate because it is a well known emulsifier and Goto et al teach to include emulsifier. It would have been obvious to make other baked products such as muffin and brownies when desiring the healthy oil composition in such products. It would have been obvious to formulation the product with any protein level depending on the nutrition desired. This can readily be determined by one skilled in the art.

In the response filed 7/11/08, applicant argues there is not disclosure of the combination of diacylglycerol with sodium stearoyl lactylate nor the improved emulsion stability and crumb softness resulting from such a combination. Goto et al do not

specifically disclose the emulsifier including sodium stearoyl lactylate; however, they do teach to add emulsifier to the food products. Thus, it would have been obvious to one skilled in the art to select any known emulsifier and sodium stearoyl lactylate is a very well known emulsifier known to be used in many food products. Applicant does not set forth why such selection would not have been obvious given the fact that sodium stearoyl lactylate is a well known and used emulsifier. As to the improved emulsion stability and crumb softness, the claims do not recite such features; thus, it is not an issue to address. Applicant points to the improved emulsion stability of sodium stearoyl lactylate as shown in figure 1C. Again the limitation of emulsion stability is not claimed; thus, it is not a point to be addressed or considered. Applicant also points to paragraph 0078 which shows that SSL gives improved properties in oil-based cookie dough. As noted above, the issue of emulsion stability and improved dough properties are not claimed; thus, it is not an issue to be addressed in the selection of different emulsifier. Goto et al teach that emulsifier is used; thus, it would have been obvious to one skilled in the art to select any known emulsifier. Furthermore, selecting an emulsifier to obtain optimum result in any particular product would only require routine experimentation. There are many available emulsifiers; selecting one that is best suited for a particular product is a result-effective variable which can readily be determined by one skilled in the art without undue experimentation.

Applicant's arguments filed 7/11/08 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 23, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794